

LAWRENCE B. BURKE, OSB #892082

larryburke@dwt.com

RICHARD M. GLICK, OSB #792384

rickglick@dwt.com

DAVIS WRIGHT TREMAINE LLP

1300 S.W. Fifth Avenue, Suite 2400

Portland, Oregon 97201-5610

Telephone: (503) 778-5239

Facsimile: (503) 778-5299

Attorneys for Intervenor-Defendant Oregon Water Utility Council

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

**WATERWATCH OF OREGON,
NORTHWEST ENVIRONMENTAL
DEFENSE CENTER, and
WILDEARTH GUARDIANS,**

Plaintiffs,

v.

**U.S. ARMY CORPS OF ENGINEERS and
R.D. JAMES, in his official capacity as
Assistant Secretary of the Army (Civil
Works),**

Defendants.

Case No. 3:20-cv-00413

**DECLARATION OF RICHARD M.
GLICK
In Support of Proposed Intervenor-
Defendant Oregon Water Utility
Council's Motion to Intervene Under
Fed. R. Civ. P. 24**

Request for Oral Argument

I, Richard M. Glick, declare as follows:

1. I am the attorney for Oregon Water Utility Council. I make this declaration on personal knowledge and in support of Oregon Water Utility Council's Motion to Intervene.

2. OWUC comprises public water utilities, large and small, from across Oregon. OWUC is a committee of the Pacific Northwest Section of the American Water Works Association (“PNWS-AWWA”), the largest non-profit scientific and educational association dedicated to managing and treating water for domestic and industrial use. As part of its mission, OWUC promotes public policies, legislation, and regulations to ensure that Oregon’s communities have adequate supplies of high quality water at the lowest economic and environmental costs.

3. Willamette Valley municipal water providers serve one of the fastest growing areas in the country and have a legal duty to secure adequate water supplies to meet anticipated population growth and economic development over a very long period of time.

4. A key strategy for OWUC achieving that goal has been to pursue access to some of the stored water capacity in the Willamette Valley Project (“WVP”), operated by the U. S. Army Corps of Engineers (“USACE”).

5. The WVP was authorized by the Flood Control Acts of 1938 and 1950 and now its reservoirs have “conservation storage” of 1.64 million acre-feet; the originally authorized purposes for the reservoirs were flood control, navigation, hydroelectric power, irrigation, potable water supply, and reduction of stream pollution. To date, the water stored in the WVP has been used for all of the authorized purposes, except for potable water supply.

6. Beginning in June 1996, the USACE began working cooperatively with the State of Oregon and stakeholders as part of what became the Willamette Basin Reservoir Study (“Study”). The Study was intended to evaluate whether changes in the operation, storage and allocation of water in the existing Willamette Basin reservoirs would better serve current and future water resource needs.

7. Work on the Study was paused in 2000 following listing of Willamette River stocks of salmon and steelhead as threatened under the Endangered Species Act (“ESA”). The USACE then engaged in formal consultations with the National Marine Fisheries Service

(“NMFS”) concerning continued WVP operations as a whole. The resulting biological opinion (“Bi-Op”) was issued in 2008.

8. In 2013, the USACE reinitiated the Study to examine the potential for reallocation of a portion of WVP storage for municipal and industrial use. OWUC members contributed to and actively participated in the Study. The recommended plan under the Study was to reallocate stored water as follows: 1,102,600 acre-feet (69%) to fish and wildlife protection, 327,650 acre-feet (21%) to agriculture and irrigation uses, and 159,750 acre-feet (10%) to municipal and industrial uses.

9. As part of the reallocation process, USACE consulted with NMFS on the effect of the reallocation plan on the ESA-listed species. The NMFS Bi-Op concluded that the proposed action under the plan would jeopardize the continued existence of certain ESA-listed fish species, but that with adoption of several Reasonable and Prudent Alternatives (“RPAs”), jeopardy could be avoided. One of the RPAs would have the USACE recommend to Congress that the USACE retain local authority of the reallocation plan so that adjustments could be made without the need for additional congressional approval. The District Engineer included this RPA in his report to the USACE Chief of Engineers.

10. On December 18, 2019, the Chief of Engineers issued his report on the Study (“Chief’s Report”) to the Secretary of the Army for transmission to Congress. The Chief’s Report recommends the reallocation plan described above, but rejects the RPA to retain local authority because it would “add unacceptable risk for the reliability of the new storage levels once authorized by Congress.” See Chief’s Report, page 2.

11. The reliability of the reallocated storage in the WVP is of the utmost importance to OWUC and its member water providers. Significant local public dollars will be expended in planning, seeking regulatory approvals, securing water rights, and constructing infrastructure in reliance on the amount of stored water recommended by the USACE. That public investment

could be lost if the plan is changed, which would cancel the value of decades of effort toward putting the WVP water to its best public use.

12. OWUC is also concerned that some of the premises underlying the NMFS RPAs are incorrect, leading to unduly conservative RPAs. In particular, OWUC has learned through a Freedom of Information Act Request that NMFS sought out and received extensive legal advice from plaintiff WaterWatch of Oregon on the administration of Oregon water law. NMFS failed to include the WaterWatch legal analysis and multiple contacts among the many references cited in the Bi-Op, although that legal analysis appears to have influenced the Bi-Op.

13. OWUC disagrees on much of the WaterWatch legal opinion. Had NMFS felt the need for assistance beyond its own legal advisors, it could have requested legal opinions from a range of other stakeholders. Had it done so, it might have come to different conclusions in the Bi-Op.

I declare under penalty of perjury under the laws of the State of Oregon that the foregoing is true and correct and that this Declaration was executed on April 6th, 2020, at Portland, Oregon.

DATED this 6th day of April, 2020.

By


Richard M. Glick

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **PROPOSED INTERVENOR-DEFENDANT OREGON WATER UTILITY COUNCIL'S MOTION TO INTERVENE** and **DECLARATION OF RICHARD M. GLICK IN SUPPORT OF PROPOSED INTERVENOR-DEFENDANT OREGON WATER UTILITY COUNCIL'S MOTION TO INTERVENE** on:

Kaitlyn Poirier
Michael Eitel
U.S. Department of Justice -
Environment and Natural Resources Division
4 Constitution Square
150 M Street, N.E. Suite 3.400
Washington, D.C. 20002
Office: 202-307-6623
Email: Kaitlyn.Poirier@usdoj.gov
Michael.Eitel@usdoj.gov

Lauren M. Rule
Elizabeth H. Potter
Andrew R. Missel
Advocates for the West
3701 SE Milwaukie Avenue, Ste. B
Portland, Oregon 97202
Office: 503-914-6388
Email: lrule@advocateswest.org
epotter@advocateswest.org
amissel@advocateswest.org

Of Attorneys for U.S. Army Corps of Engineers

Of Attorneys for Plaintiffs

☒ by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to said attorney's last-known address and deposited in the U.S. mail at Portland, Oregon on the date set forth below;

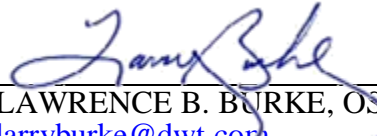
☐ by causing a copy thereof to be hand-delivered to said attorney's address as shown above on the date set forth below;

☒ by emailing a copy thereof to said attorney at his/her last-known email address as set forth above; and/or

Dated this 6th day of April, 2020.

DAVIS WRIGHT TREMAINE LLP

By



LAWRENCE B. BURKE, OSB #892082

larryburke@dwt.com

RICHARD M. GLICK, OSB #792384

rickglick@dwt.com

Telephone: (503) 241-2300

Facsimile: (503) 778-5299

Attorneys for Oregon Water Utility Council